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Supreme Court, U.S.
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In The

Supreme Court of the United States

IN RE:
SUSPENSION OF ATTORNEY
JO ANN FULTON

Jo Ann Fulton,

Petitioner,

On Petition For Writ Of Mandamus To The United States District Court For The District Of Wyoming

PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED

1. Does a federal district court lack jurisdiction to review an attorney's due process challenge of a state court suspension before imposing reciprocal discipline on that attorney in federal district court?

2. In imposing reciprocal discipline, can a federal district court suspend an attorney from practice in its court for an offense referenced but never charged by the state court, and on which no hearing was conducted and no opportunity afforded to contest inaccurate information?

PARTIES TO THE PROCEEDING

The parties are Petitioner Fulton and the Board of Professional Responsibility, Wyoming State Bar, which acts under the authority of the Wyoming Supreme Court.

CORPORATE DISCLOSURE STATEMENT

No corporate disclosure statement is applicable to this petition.

OPINIONS BELOW

The "Order" suspending Respondent from the practice of law in the United States District Court for the District of Wyoming is not reported. It is a confidential filing, not available as a public record, entered in Case No. Misc. 06-37. The order is appended hereto at pages App. 1 to App. 7. Incorporated in the district court order is the "Order Suspending Attorney from the Practice of Law" entered by the Wyoming Supreme Court [App. 8 to App. 10], and the "Report and Recommendation to the Wyoming Supreme Court" rendered by the Board of Professional Responsibility of the Wyoming State Bar [App. 11 to App. 24]. The exhibits appended to the Board's report are omitted.

JURISDICTION

The "Order" was entered by the district court on May 26, 2006, and this petition for writ of mandamus was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1651(a). The extraordinary writ is sought because no appeal to any court was available from the imposition of reciprocal attorney discipline in the district court.

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process of Clause of Amendment V, United States Constitution, Clause 3: "No person shall be . . . deprived of . . . property, without due process of law; . . . " and the Due Process of Clause of Amendment XIV, United States Constitution, Section 1, Clause 2: "nor shall any State deprive any person of . . . property without due process of law; . . . "

STATEMENT OF THE CASE

Petitioner ["Fulton"] is an attorney admitted to practice in the United States District Court for the District of Wyoming. In mid-2005, state disciplinary proceedings were conducted before the Wyoming Board of Professional

Responsibility ["BPR"] under the Wyoming Disciplinary Code ["Code"]. In the state proceedings, the BPR entered default on an Amended Complaint and rendered its report and recommendation to the Wyoming Supreme Court [App. 11 & 12]. The Wyoming Supreme Court entered its order approving the report of the BPR and suspending Fulton from the practice of law in the State of Wyoming for a period of three years [App. 8 to App. 10].

Pursuant to district court local rules, Fulton gave notice of suspension to the United States District Court for the District of Wyoming, which ordered her to show cause why reciprocal discipline should not be imposed in that court. Fulton submitted a written response to the show cause order. Without hearing, the district court imposed the same suspension in district court based on the BPR report and the Wyoming Supreme Court order. Fulton asserted the state denied her due process; the district court's rules require a review of such a due process claim [App. 25 & 26]. The district court determined that despite its own rules it did not have power to permit an attorney to remain a member of the federal court's bar if the attorney was suspended from the state court to which she was admitted [App. 3-4 at FN 1]. The district court relied on discipline for unrelated matters previously imposed on Fulton by the Tenth Circuit Court of Appeals in 1997 and 2002, reports of which were aggravation factors in the BPR's recommended discipline. The district court accepted the BPR's claim that Rule 15 did not apply despite the Code provision incorporating it. The district court also gratuitously demeaned Fulton's integrity and punned that Fulton was extended "more process than was due to" her.

FEDERAL CONSTITUTIONAL QUESTIONS

In considering reciprocal discipline on an attorney, is a federal district court without jurisdiction to review an attorney's due process challenge of the state court suspension?

Can a federal district court suspend an attorney from practice in its court for offenses that were not charged, without providing the attorney a hearing or opportunity to contest inaccurate information, and without recognizing the absence of Rule 15 jurisdiction?

The federal constitutional questions were not raised directly. Fulton was given no opportunity to address the district court's conclusion that it lacked power to deny reciprocal discipline in its court. Fulton responded to the district court's order to show cause on the expectation that the reciprocal discipline was to be based on the offenses charged in the state court, not on the materials that related only to the sentence she was given.

REASONS FOR GRANTING THE WRIT

1. Departure From The Usual And Accepted Course Of Judicial Proceedings

The District Court for the District of Wyoming deferred, and subordinated its authority, to a state court and a state disciplinary board. Suspension of Petitioner from the practice of law in the district court was so unusual and so departed from the expected role of a federal court in protecting constitutional rights that this Court should exercise its supervisory power over the district court by allowing the writ sought herein.

2. The District Court's Decision Conflicts With Decisions Of This Court As To The Independent Power Of A Federal Court Over Attorney Discipline In Its Court

The district court decided it lacked the power to avoid automatic discipline. Though admission to practice before a federal court is derivative of membership in a state bar, a state suspension does not result in automatic suspension by the federal court. The state action is not conclusively binding on the federal court and the federal court is compelled to consider whether the notice of charges was sufficient for imposition of discipline. *Theard v. United*

States, 354 U.S. 278, 77 S.Ct. 1274, 1 L.Ed.2d 1342 (1957); *In re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968); *Selling v. Radford*, 243 U.S. 46, 37 S.Ct. 377 (1917).

3. An Amended Complaint Without Rule 15 Jurisdiction Denies Due Process

Due process is denied where the requirements of Rule 15 are not met. *Nelson v. Adams USA, Inc.* 529 U.S. 460, 465-467 (2000). The rules of civil procedure have substantive effect. They are not mere formalities, but have the force and effect of law and compliance is mandatory. *Thompson v. Immigration and Naturalization Service*, 375 U.S. 384, 84 S.Ct. 397, 11 L.Ed.2d 404 (1964) (Clark, J. dissenting); *Vanasse v. Ramsay*, 847 P.2d 993 (Wyo.1993); *Paxton Resources, L.L.C. v. Brannaman*, 95 P.3d 796 (Wyo.2004).

In the BPR proceedings, the prosecutor filed an Amended Complaint without motion, notice or approval of the BPR, after Fulton had answered the original complaint. Suspension was imposed on Fulton by default on that Amended Complaint in disregard of Rule 15. Thus the BPR lacked jurisdiction to recommend suspension, and the Wyoming Supreme Court in turn lacked jurisdiction to enter its order of suspension.

4. The Denial Of Due Process Was Extraordinary

a. *Fulton was not informed of the charges against her.* Discipline was imposed on Fulton for giving illegal tax advice [App. 19]. She was informed of no IRC provision, statute or regulation she allegedly violated. The BPR concluded Fulton had advised clients about avoiding tax consequences. That is not a crime. Substantial parts of the legal and accounting professions are devoted to that endeavor.

b. *Evidence against Fulton was not provided to her.* On the basis of surreptitious tape recordings made without Fulton's knowledge and not provided to her, the BPR

sanctioned Fulton for being incompetent, for counseling a client to commit a crime or dishonesty, and for conduct prejudicial to the administration of justice [App. 19 & 21].

c. *Improper Continuance.* Time in which to file the Amended Complaint was arranged by the prosecutor obtaining a continuance, *ex parte,* several days before the scheduled hearing on the Complaint. The order continuing the hearing was signed *ex parte* by the prosecutor's own administrative assistant, purportedly acting for the BPR.

d. *There was no default.* As required by the Code, Fulton mailed her answer to the Amended Complaint in a timely manner, as shown by her certificate of service and the postage meter date on the envelope. The BPR determined that Fulton's certificate was false.

e. *Default was entered on charges which had been fully answered.* In her previously filed answer to the original Complaint, Fulton had answered the allegations of the Amended Complaint except as to minor charges set forth in two new causes of action.

CONCLUSION

This Court should grant a writ of mandamus to require the United States District Court for the District of Wyoming to perform the duty of a federal court in assuring the constitutional right of every citizen to the due process of law.

Respectfully submitted,

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United States District Court
For The District of Wyoming

IN RE: SUSPENSION	)	
OF ATTORNEY	)	Case No. Misc. 06-37
JO ANN FULTON,	)	

ORDER

(Filed May 26, 2006)

This matter comes before the Court on Responses by Ms. Fulton and the Wyoming State Bar to the Court's April 21, 2006, Order to Show Cause. The Court, having carefully considered the material submitted in the case, and being otherwise fully advised in the premises, FINDS and ORDERS as follows:

Background

The basic facts of the case have been extensively discussed in the materials submitted in this case, and it is not this Court's role to act as a fact finder. U.S.D.C.L.R. 83.12.5(d). However, because of the serious nature of this action, the Court will, once more, recite the facts upon which the Court relies in coming to its conclusions.

Ms. Fulton was admitted to the Bar of the State of Wyoming and to the Bar of this Court in 1990, and was admitted to the Bar of the United States Court of Appeals for the Tenth Circuit in 1992. On April 7, 1997, the Tenth Circuit issued an Order which stated that Ms. Fulton had twice filed untimely briefs without moving for extensions of time, and she had failed to respond at all to an earlier order to show cause. (April 7, 1997 Order, 97-811). The

Tenth Circuit warned that future transgressions might subject Ms. Fulton to more serious disciplinary action.

Between February 11, 2002, and August 8, 2002, the Tenth Circuit issued a series of Orders which attempted to correct numerous deficient filings in three separate appeals. (June 7, 2002 Order, 02-809). The result was a $500.00 sanction which was due June 27, 2002. Ms. Fulton failed to make timely payment, and the Court issued another show cause order. The Court accepted her late payment but admonished that future violations could result in suspension or disbarment. (August 8, 2002 Order, 02-809).

Meanwhile, on June 3, 2002, the Wyoming Board of Professional Responsibility issued an Order Imposing Private Reprimand pursuant to a stipulation between bar counsel and Ms. Fulton. (Order Imposing Private Reprimand, 2002-04). The Board found that Ms. Fulton violated the Wyoming Rules of Professional Conduct by pursuing a claim "past the point at which the claim was meritorious." (Id. at 2); W.R.P.C. 3.1, 4.4.

On May 20, 2003, the Tenth Circuit again issued an order to show cause after Ms. Fulton failed to file opening briefs in two appeals, failed to respond to a show cause order in one case, and filed a deficient brief in the other. (May 20, 2003, Order, 02-809 at 2). In its July 23, 2003, Order, the Tenth Circuit found that Ms. Fulton's response to the show cause order was inadequate, and the court suspended her from practice before the Tenth Circuit for one year. The court also removed her from the CJA panel. (July 23, 2003, Order 03-809 at 2). As a result of the discipline in the Tenth Circuit, the Wyoming Supreme Court issued an Order of Public Reprimand. *Board of*

Professional Responsibility v. Jo Ann Fulton, D-03-15, January 6, 2004.

Despite these numerous attempts to alert Ms. Fulton to the dangers of her conduct, the Wyoming Board of Professional Responsibility received two new complaints in the Fall of 2005. The Report and Recommendation issued by the Board of Professional Responsibility on March 15, 2006, describes in painful detail, an astonishing record of previously unaddressed derelict conduct which culminated in the Wyoming Supreme Court's Order of Suspension. *Board of Professional Responsibility v. Jo Ann Fulton,* 2006 WY 51. The Wyoming Supreme Court suspended Ms. Fulton from practice for three years. As a result, this Court must now determine whether she should be suspended from the Bar of this Court as well.

Discussion

Our Local Rules require an attorney who has been subjected to public discipline by another court to promptly notify the Clerk of this Court of such action. U.S.D.C.L.R. 83.12.5(a). The Court notes in passing that Ms. Fulton did not comply with this rule. The Court must then issue an order to show cause, and after thirty days, the Court must impose identical discipline. 83.12.5(b)(2) and (d). To avoid the imposition of identical discipline, the attorney must show one of four things: a deprivation of due process, an infirmity of proof, a grave injustice, or that the misconduct warrants substantially different discipline. 83.12.5(d)(1)-(4).[1]

[1] Because membership in the Bar of the State of Wyoming is a prerequisite to membership in the Bar of the Court, the Court cannot see how it could allow Respondent to practice before it even if one of the

(Continued on following page)

A. Rule 15, Due Process, and Jurisdiction

Here, Ms. Fulton has attempted to cast a pall over the proceedings before the Board of Professional Responsibility and the Wyoming Supreme Court by arguing that one of the complaints filed against her was invalid, and as a result, the Board of Professional Conduct lacked jurisdiction to render its report, and this infirmity rendered the Wyoming Supreme Court's order void. The Court has carefully reviewed the procedures used by the Board of Professional Responsibility to adjudicate this issue.

The Court finds Respondent's due process argument tenuous at best and disingenuous at worst. In the first place, the one case Respondent cites to bolster her position regarding the amended complaint is inapposite. *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 465 (2000). In that civil case, "judgment was entered against [the defendant] the moment permission to amend the pleadings was granted." *Id.* Furthermore, there was no question in that case that Rule 15 applied. Here, the Board of Professional Responsibility determined that Wyoming Rule of Civil Procedure 15 could not apply because it conflicted with the Disciplinary Code. Wyo. Disc. Code § 11(n).

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four elements were met. Because the Rule contemplates discipline in any other court, there might be some circumstances in which in [sic] imposition of identical discipline would not be appropriate, if for example, an attorney were suspended from practice in Montana, but retained her Wyoming license. In cases where the suspension comes from the Wyoming Supreme Court, this Court simply has no authority to vary that discipline. Membership in the Bar of this Court is absolutely conditioned upon membership in the Bar of the State of Wyoming.

Secondly, the report and recommendation fully discusses the procedures used by the Board of Professional Responsibility and the leniency with which the Board treated Respondent's request for additional time. (Report and Rec. at 1-2). Based on the numerous disciplinary actions chronicled above, Ms. Fulton was clearly aware that there could be repercussions if she failed to timely file an answer to the complaints or respond to the notices of imminent default. Nevertheless, the Board of Professional Responsibility allowed Ms. Fulton additional time to file a motion to set aside the Defaults. That motion was also filed four days late. Again, however, the Board of Professional Responsibility extended more process than was due to Respondent. The Board considered the motion despite its untimeliness.

B. Grave Injustice

Ms. Fulton next argues that imposition of identical discipline would be a grave injustice, because she contends there was no default. To prove this point she has, in her usual fashion, attached a photocopy of an envelope purporting to show that she mailed her answer appropriately. The Court declines to entertain such a specious argument. Ms. Fulton is well aware that no document is received by a judicial body until it is filed. This Court has received enough of Ms. Fulton's photocopied envelopes to be highly suspicious of their authenticity.[2]

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[2] While it used to be easier to fabricate the details about when a document was mailed, in this day in age, faxes are time stamped and UPS and USPS packages can be electronically tracked. Given these more reliable methods, Ms. Fulton's photocopied envelopes seem brazen and bizarre.

Respondent next contends that she was never provided with evidence against her. If this allegation were true, it would indeed be a grave injustice. However, Ms. Fulton is not a lay person. She understands that, in some cases, discovery must be requested to be received. In the matters before the Board of Professional Responsibility, she never made any discovery requests. Wyo. Disc. Code § 11(n). She never asked for a copy of the audio tape with which she now takes issue. Furthermore, at the hearing before the Board of Professional Responsibility, she stipulated to the admissibility of the audio tape.

Conclusion

The Report and Recommendation of the Board of Professional Responsibility to the Supreme Court provides a detailed factual basis to support the Supreme Court's Order of Suspension. Ms. Fulton's tortured history as a member of the State and Federal Bars of Wyoming is an astonishing record of utter dereliction of duty. The Court finds that, given Ms. Fulton's history, the Wyoming Supreme Court's suspension order was lenient. The documentary evidence alone demonstrates a course of conduct so egregious that, had the Supreme Curt ruled that Ms. Fulton should be disbarred, such a ruling would be unassailable. Respondent is manifestly unfit to practice in this Court.

The Court suspects that Ms. Fulton may struggle with some underlying issues that make it more difficult to meet the standards necessary to practice law, and the Court is sympathetic to those challenges. Nevertheless, in her present condition, allowing her to continue to practice presents a grave risk to the public. A law license in her

hands is a tool for inflicting incalculable harm on innocent lay persons.

THEREFORE, it is hereby **ORDERED** that Jo Ann Fulton shall be suspended from the practice of law in the District of Wyoming for a period of three (3) years from the date of this order.

DATED this 26th day of May, 2006.

/s/ William F. Downes
United States District Judge

IN THE SUPREME COURT, STATE OF WYOMING
2006 WY 51

April Term, A.D. 2006
April 20, 2006

BOARD OF PROFESSIONAL RESPONSIBILITY, WYOMING STATE BAR,	)	06 MISC 37
	)	***No. D-06-3***
Petitioner,	)	
	)	
v.	)	
	)	
JO ANN FULTON,	)	
	)	
Respondent.	)	

ORDER SUSPENDING ATTORNEY FROM THE PRACTICE OF LAW

This matter came before the Court upon a "Report and Recommendation to the Wyoming Supreme Court," filed herein March 17, 2006, by the Board of Professional Responsibility for the Wyoming State Bar. After a careful review of the Board of Professional Responsibility's Report and Recommendation, the materials attached thereto, "Respondent Fulton's Response to Report and Recommendation to the Wyoming Supreme Court," and the file, this Court finds that the Report and Recommendation should be approved, confirmed and adopted by the Court; and that the Respondent, Jo Ann Fulton, should be suspended form [sic] the practice of law for a period of three years. It is, therefore,

ADJUDGED AND ORDERED that the Board of Professional Responsibility's Report and Recommendation to the Wyoming Supreme Court, which is attached hereto and incorporated herein, shall be, and the same hereby is,

approved, confirmed, and adopted by this Court; and it is further

ADJUDGED AND ORDERED that, as a result of the conduct set forth in the Report and Recommendation, Respondent Jo Ann Fulton shall be, and hereby is, suspended from the practice of law for a period of three years from the date of this order; and it is further

ORDERED that Jo Ann Fulton shall reimburse the Wyoming State Bar the amount of $3,779.98, representing the costs incurred in handling this matter, as well as pay an administrative fee of $1,000.00, by paying the amount of $4,779.98 to the Clerk of the Board of Professional Responsibility, on or before August 1, 2006; and it is further

ORDERED that, pursuant to Rule 4(c) of the Disciplinary Code for the Wyoming State Bar, this Order Suspending Attorney from the Practice of Law, along with the incorporated Report and Recommendation, shall be published in the Wyoming Reporter and the Pacific Reporter; and it is further

ORDERED that the Clerk of this Court shall docket this Order Suspending Attorney from the Practice of Law, along with the Report and Recommendation, as a matter coming regularly before this Court as a public record; and it is further

ORDERED that the Clerk of this Court transmit a copy of this Order Suspending Attorney from the Practice of Law to the members of the Board of Professional Responsibility, and the clerks of the appropriate courts of the State of Wyoming.

DATED this 18th day of April, 2006.

BY THE COURT:

/s/ William U. Hill
WILLIAM U. HILL
Chief Justice

BEFORE THE BOARD OF PROFESSIONAL RESPONSIBILITY WYOMING STATE BAR STATE OF WYOMING

In the matter of	)	
JO ANN FULTON,	)	***Docket Nos.***
WSB Attorney No. 5-2686,	)	***2005-02 and 2005-29***
Respondent.	)	

REPORT AND RECOMMENDATION TO THE WYOMING SUPREME COURT

On February 28, 2006, a disciplinary hearing was held before the Wyoming State Bar Board of Professional Responsibility (hereafter the "Board") in the matter of Jo Ann Fulton, Docket Nos. #2005-02 and #2005-29. The Wyoming State Bar was represented by Bar Counsel, Rebecca A. Lewis, and Respondent Jo Ann Fulton represented herself. After hearing evidence and argument from both sides, the Board submits the following Report and Recommendation.[1]

PROCEDURAL HISTORY

In Docket No. 2005-02, an Amended Complaint was filed and served on Respondent on November 2, 2005. Pursuant to Rule 11(f) of the Disciplinary Code for the Wyoming State Bar (hereafter the "Disciplinary Code"), Respondent had twenty (20) days to serve an answer on Bar Counsel and the Board. Respondent failed to timely answer the Amended Complaint in Docket No. 2005-02.

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[1] Board member Devon Coleman abstained from voting on these disciplinary recommendations.

On November 28, 2005, Bar Counsel filed and served a Motion For Entry of An Order of Default, together with a Notice of Imminent Default on Amended Complaint. Respondent did not timely respond to the Notice of Imminent Default, and on December 20, 2005, the Board issued its Entry of Order of Default and Order Setting Hearing on Sanctions in Docket No. 2005-02.

In Docket No. 2005-29, a Complaint was filed and served on Respondent on November 15, 2005. Pursuant to Rule 11(f) of the Disciplinary Code, Respondent had twenty (20) days to serve an answer on Bar Counsel and the Board. Respondent failed to timely answer the Complaint in Docket No. 2005-29. On December 6, 2005, Bar Counsel filed and served a Motion For Entry of An Order of Default together with a Notice of Imminent Default on Disciplinary Summons and Complaint. Respondent did not timely respond [sic] the Notice of Imminent Default, and on December 27, 2005, the Board issued its Entry of Order of Default and Order Setting Hearing on Sanctions in Docket No. 2005-29.

On January 10, 2006, the Chair of the Board, acting as a disciplinary judge pursuant to Rule 11(g) of the Disciplinary Code, held a pre-hearing conference. At the conference, Respondent requested leave to file a motion to set aside the default orders in both Docket No. 2005-02 and Docket No. 2005-29, and on January 10, 2006, the Board issued its Order Continuing Hearing in which the disciplinary hearings set for January 18 and 19, 2006 were continued, and further ordered that Respondent's motion for relief pursuant to Rule 60 of the Wyoming Rules of Civil Procedure be filed no later than January 20, 2006. Respondent's Rule 60(b) Motion For Relief From Entry of

Default was untimely filed on January 24, 2006. Notwithstanding the untimely filing, Respondent's Motion was considered by the Board, and arguments by Respondent and Bar Counsel were heard by the Board on February 10, 2006.

The Board found that the default orders entered in Docket Nos. 2005-02 and 2005-29 were properly entered pursuant to Rule 11(m) of the Disciplinary Code. It therefore became Respondent's burden to prove that relief from the default orders was warranted under Rule 60 of the Wyoming Rules of Civil Procedure, made applicable to these proceedings pursuant to Rule 11(n) of the Disciplinary Code. Under Rule 60, a litigant may seek relief from judgments and orders attributable to (a) clerical mistakes, or (b) other reasons. In this matter, Respondent seeks relief from the default orders pursuant to Rule 60(b)(1), which authorizes relief, upon such terms as are just, when the entry of the order was occasioned by "mistake, inadvertence, surprise or excusable neglect." Under applicable Wyoming law, a Rule 60(b)(1) motion must clearly be substantiated by adequate proof, and the burden is on the movant to bring himself within the rule. *Vanesse v. Ramsey,* 847 P.2d 993 (Wyo.1993); *United States Aviation, Inc. v. Wyoming Avionics, Inc.,* 664 P.2d 121 (Wyo.1983).

The Board found that Respondent failed to carry her burden to prove that she was entitled to relief from the orders of default entered in Docket No. 2005-02 and Docket No. 2005-29. Specifically, the Board found that Respondent failed to carry her burden to prove that her failure to timely respond to the underlying disciplinary complaints, and more importantly, the notices of imminent default, were the result of mistake, inadvertence, surprise or excusable neglect. Therefore the Motion was denied and

the matters went to hearing on February 28, 2006, to determine the form of discipline to be imposed.

FINDINGS OF FACT ON #2005-02

1. Respondent, Jo Ann Fulton, is an attorney who has been licensed to practice law in Wyoming since 1990. Her office is located in Laramie, Wyoming.

2. Respondent represented Terry and Casi Rummel in regard to personal injuries Casi Rummel received in a vehicle accident. The Representation Agreement provided at paragraph V. "Expenses," that paralegal fees were to be billed to and paid by Rummels as an "expense." This is a variation from the form contingency fee agreement approved by the Wyoming Supreme Court in Rule 6 of the Rules Governing Contingency Fees for Members of the Wyoming State Bar, and affected substantive rights of the Rummels. Respondent did not have this modification of the form approved by the District Court of the Second Judicial District, as required by Rule 6.

3. Respondent did not provide to Rummels a copy of the Rules Governing Contingency Fees for Members of the Wyoming State Bar, as required by Rule 5(e) of those Rules.

4. Some, if not all, of the paralegal fees that were billed should have been included as part of the contingency fee as they were actions which are generally understood to be part of the legal services to be compensated by the contingency fee.

5. Although the Representation Agreement indicated that the "adverse parties" were "G.E. Property & Casualty Insurance Co.," Respondent was also pursing legal matters

in regard to Farm Bureau and the Town of Saratoga for which she sought a fee.

6. Respondent and Rummels settled some claims for a total of $101,864.00. Most of that money was received in November 2003. Inasmuch as Respondent was planning to file suit for Rummels against the Town of Saratoga, Respondent and Rummels agreed that Respondent would retain the funds for that possible litigation. Respondent was unsure what amount of expenses would be incurred in that suit, but did not expect that suit to use all the settlement funds from the settlement.

7. In the course of the discussion regarding retention of the settlement monies, Respondent erroneously advised Rummels that if Respondent kept the money, the interest earned would be part of the settlement such that it would not be taxable.

8. On 16 February 2004, Respondent purchased a Certificate of Deposit ("CD") from U.S. Bank with the Rummels' settlement monies. The CD was in the amount of $101,864.00 and matured in 2 years. The CD was purchased in the name of Fulton Law Office, P.C., and not in the name of Terry or Casi Rummel. The CD also included the tax I.D. number for Respondent, not Rummels. No interest from this CD was paid to the Wyoming Bar Foundation as it would have been if the CD had been part of Respondent's IOLTA trust account.

9. Respondent informed Rummels of the purchase of the CD, but did not provide them with any of the documentation even after Rummels requested it on numerous occasions. Respondent did not inform Rummels that the CD had been purchased in the name of Fulton Law Office

firm. Respondent also did not inform them that it had a 2 year term.

10. Although the settlement monies were put in the CD rather than distributed to Rummels, allegedly for the purpose of funding the suit against the Town of Saratoga, Respondent did not file that suit until 16 December 2004. The basis of the suit was essentially that the Town of Saratoga owed a duty to Casi Rummel to issue a citation to the person with whom she had the vehicle accident, and that Casi Rummel was somehow injured or damaged as a result of the Town's failure to issue such a citation. This suit was frivolous and totally without merit, as even a small amount of legal research would have revealed.

11. In response to the suit, the attorney for the Town of Saratoga served a Wyoming Rules of Civil Procedure Rule 11 notice, then filed a motion to dismiss. The suit was dismissed in early 2005 after Rummels contacted Attorney Matthew Castano to negotiate the dismissal of the suit without Rule 11 sanctions.

12. In late 2004, it was agreed that $25,000 of the settlement funds would be released to the Rummels by Respondent.

13. Near the end of 2004, Rummells requested the balance of the settlement funds. Rummels had told Respondent that they were in significant need of this money as they had a bank note coming due. After a number of unexplained delays by Respondent, she finally provided two checks payable from the "Fulton Law Office, PC" operating account, for $25,000 and $20,312.12, respectively. When Rummels attempted to cash the checks, the checks were returned for insufficient funds. The money

was eventually paid by Respondent in the form of cashier's checks.

14. Before the settlement monies were distributed, Respondent counseled Rummels in regard to how to pay out the settlement monies in a way that Respondent contended would avoid tax consequences for the interest the monies had earned while held by Respondent. That advice included paying out the monies in several smaller amounts, which is what was done, and paying the monies to persons other than Rummels.

15. In addition to the settlement payout, Respondent paid $20,000 to Rummels as settlement of a dispute between Rummels and Respondent over Respondent's legal fees.

FINDINGS OF FACT ON #2005-29

1. Jo Ann Fulton is an attorney licensed to practice law in Wyoming since 1990. Her office is located in Laramie, Wyoming.

2. On 9 May 2005, Myra Schwartz of Laramie, Wyoming, called her son, Ryan Schwartz, an attorney in Cheyenne, Wyoming, regarding a possible problem with the sale of their home. Specifically, Myra informed Ryan that Respondent had contacted the Schwartzs' realtor about a potential lawsuit by the Schwartzs' neighbors regarding the noise level of their air conditioner.

3. During that call, Myra entered into an attorney-client relationship with Ryan Schwartz to represent she and her husband, Jay Schwartz, in the dispute with the neighbors and to protect their interests while they attempted to sell the property.

4. Ryan Schwartz then called the Schwartzs' realtor, Patti MacMillan to confirm what Myra had told him, which she did.

5. Ryan Schwartz thereafter called Respondent on 9 May 2005. During the call, Ryan introduced himself as an attorney and informed Respondent that he represented the Schwartzes with respect to the air conditioner dispute.

6. Ryan Schwartz and Respondent discussed the merits of the case, and Ryan stated that the Schwartzes felt Respondent's clients' claims were unfounded.

7. The conversation ended with Ryan Schwartz explaining that the Schwartzes would not be taking any action regarding Respondent's clients' complaints, and that Respondent should contact Ryan Schwartz with any other questions.

8. Ryan Schwartz never gave Respondent permission to contact the Schwartzes directly.

9. By letter of 8 September 2005, Respondent contacted the Schwartzes directly. The letter was not copied to Ryan Schwartz.

CONCLUSIONS OF LAW IN #2005-02

1. Respondent violated Rule of Professional Conduct 1.5(a) by including paralegal time for legal services which should be generally covered by the contingency percentage.

2. Respondent violated Rule 1.5 by violating Rules 5(e) and 6 of the Rules Governing Contingency Fees for Members of the Wyoming State Bar in that Respondent did not provide Rummels with a copy of those Rules, the

Representation Agreement did not comply with the form agreement in Rule 6, and Respondent did not seek approval for the modification of the form agreement.

3. By filing a suit against the Town of Saratoga which had no merit, Respondent violated Rules 1.1 and 3.1.

4. By telling Rummels that the interest on the settlement funds was not taxable if Respondent kept those funds, Respondent violated Rule 1.1.

5. By purchasing the Certificate of Deposit in the name of her law firm instead of her clients' names, Respondent violated Rule 1.15(a) because she did not keep those funds separate from her own but essentially took them as her own.

6. Respondent violated Rule 1.15(c) by delivering a portion of their funds to them with two checks which were returned for insufficient funds.

7. Respondent violated Rules 1.15 and 1.4 by failing to respond to Rummels' requests for information regarding the purchase of the certificate of deposit.

8. Respondent violated Rules 1.2(d), 8.4(c) and 8.4(d) by counseling Rummels regarding how to unlawfully avoid tax consequences of interest earned from the settlement monies.

CONCLUSIONS OF LAW IN #2005-29

1. Respondent violated Rule of Professional Conduct 4.2 by communicating with Schwartzes directly about the dispute over the air conditioner when Respondent knew that attorney Ryan Schwartz represented them and when

Ryan Schwartz had not given Respondent permission for that communication and there is no law which authorized that communication.

AGGRAVATING FACTORS FOR #2005-02 AND #2005-29

The ABA Standards for Imposing Lawyer Sanctions, Standard 9.22, lists factors which may be considered in aggravation in determining what sanction to impose or recommend. The following are the aggravating factors which were supported by the evidence:

9.22(a) – prior disciplinary offenses. Respondent has a significant history of prior discipline. To summarize, in 2002, Respondent received a Private Reprimand from the Board of Professional Responsibility for violations of Rules 3.1 and 4.4 in regard to asserting a non-meritorious claim. By Order of 23 July 2003, the 10th Circuit suspended Respondent from practice before that Court as the culmination of a number of disciplines it had issued to her. The Wyoming Supreme Court, based on that suspension by the 10th Circuit, issued a public censure to Respondent on 6 January 2004. Attached hereto as part of this Report and Recommendation are Exhibits 13, 14, 15, and 18 which are the actual disciplinary orders which were very persuasive in the Board's recommendations.

9.22(c) – a pattern of misconduct. Respondent continues to breach the same types of rules in #2005-02 as she did in regard to her prior disciplinary matters.

9.22(d) – multiple offenses. In regard to #2005-02 and #2005-29, Respondent violated a number of the Wyoming Rules of Professional Conduct. This shows either a lack of

knowledge of her ethical obligations or a consistent disregard of them or both.

9.22(e) – bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. Respondent initially failed to timely answer the Amended Complaint in #2005-02 and the Complaint in #2005-29. After the defaults were entered, and Respondent was sent notice of them, she did nothing until the pre-hearing conference on 10 January 2006 which preceded the hearing which was set to begin on 18 January 2006. At that time, she made an oral request for time to file a motion to set aside the defaults. She represented to the Board Chair, Joe Teig, that she needed at least 10 days to prepare the motion and get the necessary affidavits to support the motion. Therefore, the hearing on these matters was continued for about 6 weeks to allow Respondent time to file her motion, for the Bar to respond, and for the entire Board to consider the motion. The motion, however, was not timely filed, and there were no affidavits filed. Additional facts in support of this aggravating factor are set forth in more detail in the Bar's Opposition to Respondent's Rule 60(b) Motion for Relief from Entry of Default, filed on 30 January 2006.

9.22(f) – submission of false evidence, false statements or other deceptive practices during the disciplinary process. Respondent testified under oath to several matters that were contradicted by tape recorded telephone conversations between Rummels and Respondent. Those tapes were admitted into evidence as Exhibit 17.

9.22(g) – refusal to acknowledge wrongful nature of conduct. At the hearing on these matters, Respondent did not take full responsibility for or acknowledge her wrongful

conduct. To the contrary, she sought to blame her staff for issuing the settlement checks on the wrong account which resulted in them being returned for insufficient funds. She sought to blame the bank for the manner in which the CD was issued. She sought to blame her mishandling and commingling of the trust account monies on Bar Counsel for not recommending a CLE she could take on trust accounts after Respondent's trust account was overdrawn through an error in her office back in June 2004. She sought to blame Rummels for how the settlement monies were handled and distributed.

9.22(h) – vulnerability of victim. Rummels were very vulnerable. They were unsophisticated consumers of legal services and trusted Respondent to provide a fair and proper representation agreement and to properly purchase a CD which was secure and which fit their needs. She did neither. In addition, based on Respondent's recommendations, Respondent filed a frivolous suit against the Town of Saratoga while holding Rummels' settlement money for more than 11 months for the purported purpose of paying expenses of a suit that had no merit.

9.22(i) – substantial experience in the practice of law. Respondent has been practicing law since 1990.

RECOMMENDATIONS FOR #2005-02 AND #2005-29

The ABA Standards for Attorney Sanctions, Standard 7.2, applies to violations of Rule 1.5 and states that "suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public or the legal system."

ABA Standard 4.12 applies to violations of 1.15 and states that "suspension if generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client."

The comment to that Standard states in pertinent part, "Suspension should be reserved for lawyers who engage in misconduct that does not amount to misappropriation or conversion. The most common cases involve lawyers who commingle client funds with their own or fail to remit client funds promptly."

The comment also says, "Because lawyers who commingle client's funds with their own subject the client's funds to the claims of creditors, commingling is a serious violation for which a period of suspension is appropriate even in cases when the client does not suffer a loss."

ABA Standard 5.11(b) states that "disbarment is generally appropriate when a lawyer engages in any other intentional conduct (other than those listed in subsection a) involving dishonesty, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice."

ABA Standard 4.42 states that "suspension is generally appropriate when (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client."

Given the findings of fact and conclusions of law detailed above, along with the ABA Standards for Attorney Sanctions, the Board hereby recommends that the Wyoming Supreme Court order the following:

a. Respondent be suspended from the practice of law for a period of three years from the date of the Court's Order;

b. Respondent be ordered to pay the costs of prosecution and hearing these two matters in the amount of $3,779.98, no later than 1 August 2006; and

c. Respondent be ordered to pay the administrative fee for both cases in the amount of $1000.00 no later than 1 August 2006.

Dated March 15, 2006

/s/ Joe M. Teig
Joe M. Teig, Chair

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of this ~~Opposition~~ Report & Recommendation was mailed by United States Mail, postage prepaid, on March 17, 2006 to the following:

Jo Ann Fulton
P.O. Box 1267
Laramie, WY 82073-1267

/s/ Sandy J. Inniss
Sandy J. Inniss

[SEAL]

UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

LOCAL RULES

Rule 18.12.5 DISCIPLINE IMPOSED BY OTHER COURTS

(a) Subject to Public Discipline. Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other Court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of this Court of such action.

(b) Filing of Certified or Exemplified Copy of Judgment or Order. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another court, this Court shall forthwith issue a notice directed to the attorney containing:

(1) a copy of the judgment or order from the other court;

(2) an order to show cause directing that the attorney inform this Court within thirty (30) days after service of that order upon the attorney, personally or by mail, of any claims by the attorney predicated upon the grounds set forth in Local Rule 204 (d) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

(c) Discipline in Other Jurisdiction Stayed. In the event the discipline imposed in the other jurisdiction has

been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

(d) Imposition of Identical Discipline. Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of Local Rule 83.12.5 (b) above, this Court shall impose the identical discipline unless the respondent-attorney demonstrates, or this Court finds upon the face of the record upon which the discipline in another jurisdiction is predicated, that it clearly appears:

(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) there was such an infirmity of proof establishing the misconduct as to give rise to the firm conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject;

(3) the imposition of the same discipline by this Court would result in grave injustice; or

(4) that the misconduct established is deemed by this Court to warrant substantially different discipline. Where this Court determines that any of said elements exist, it shall enter such order as it deems appropriate.

(e) Final Adjudication in Another Court. In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the Court of the United States.

(f) Appointment of Counsel to Prosecute. This Court may, at any stage, appoint counsel to prosecute the disciplinary proceedings.